

**FILED**

**JUN 18 2008**

**Board of Vocational Nursing  
and Psychiatric Technicians**

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7  
8 **BEFORE THE**  
**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. VN-2006-336

12 DANIEL JOSE GARCIA  
3905 Big Dalton Avenue  
Balwin Park, CA 91706  
13 Vocational Nurse License No. VN 209886

**ACCUSATION**

14 Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

18 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this  
19 Accusation solely in her official capacity as the Executive Officer of the Board of Vocational  
20 Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs.

21 2. On or about June 29, 2004, the Board issued Vocational Nurse License  
22 Number VN 209886 to Daniel Jose Garcia (Respondent). The Vocational Nurse License was in  
23 full force and effect at all times relevant to the charges brought herein and expired on February  
24 28, 2010, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, Department of Consumer  
27 Affairs, under the authority of the following laws. All section references are to the Business and  
28 Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2875 of the Code provides in pertinent part that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act (§ 2840 et seq.).

5. Section 118, subdivision (b) of the Code provides in pertinent part that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 490 of the Code provides: "A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

7. Section 493 of the Code states in pertinent part: "Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to . . . suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the . . . licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question."

8. Subdivision (a) of section 2878 of the Code authorizes the Board to suspend or revoke a license issued under the Vocational Nursing Practice Act for unprofessional

1 conduct.

2           9. Subdivision (e) of section 2878 of the Code authorizes the Board to  
3 suspend or revoke a license for "[m]aking or giving any false statement or information in  
4 connection with the application for issuance of a license."

5           10. Subdivision (f) of section 2878 of the Code authorizes the Board to  
6 suspend or revoke a license for "[c]onviction of a crime substantially related to the qualifications,  
7 functions, and duties of a licensed vocational nurse, in which event the record of the conviction  
8 shall be conclusive evidence of the conviction."

9           11. Subdivision (j) of section 2878 of the Code authorizes the Board to  
10 suspend or revoke a license for "[t]he commission of any act involving dishonesty, when that  
11 action is related to the duties and functions of the licensee."

12           12. California Code of Regulations, title 16, section 2521 states in pertinent  
13 part: "For the purposes of . . . suspension, or revocation of a license pursuant to Division 1.5  
14 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be  
15 considered to be substantially related to the qualifications, functions or duties of a licensed  
16 vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed  
17 vocational nurse to perform the functions authorized by his license in a manner consistent with  
18 the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those  
19 involving the following:

20           . . .

21           "(e) Conviction of a crime involving fiscal dishonesty."

22           13. Section 125.3 of the Code provides in pertinent part that the Board may  
23 request the administrative law judge to direct a licentiate found to have committed a violation or  
24 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
25 and enforcement of the case.

26                           FIRST CAUSE FOR DISCIPLINE

27                           (Commission of Act Involving Dishonesty)

28           14. Respondent is subject to disciplinary action under subdivision (j) of

1 section 2878 of the Code in that Respondent was convicted of the felony of grand theft of money  
2 and personal property, in violation of Penal Code section 487, subdivision (a). The  
3 circumstances leading to the conviction are that between April 30 and May 23, 2005, while  
4 Respondent was employed as a T.J. MAXX store manager, Respondent unlawfully took from  
5 T.J. MAXX more than \$1,300 in currency and conducted fraudulent refund transactions resulting  
6 in a cumulative cash loss of more than \$260.

7 SECOND CAUSE FOR DISCIPLINE

8 (Conviction of Crimes Substantially Related to Practice)

9 15. Respondent is subject to disciplinary action under subdivision (f) of  
10 section 2878 of the Code and section 2521 of title 16 of the California Code of Regulations in  
11 that Respondent was charged and convicted of felony grand theft, as more fully set forth in  
12 paragraph 14, above.

13 THIRD CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct)

15 16. Respondent is subject to disciplinary action under subdivision (a) of  
16 section 2878 of the Code in that Respondent was charged and convicted of felony grand theft, as  
17 more fully set forth in paragraph 14, above.

18  
19 FOURTH CAUSE FOR DISCIPLINE

20 (False Statement in Application)

21 17. Respondent is subject to disciplinary action under subdivision (e) of  
22 section 2878 of the Code in that Respondent made false statements in connection with his  
23 application for issuance of a license. The circumstances are:

24 A Board form entitled "Record of Conviction" enclosed with the application  
25 required Respondent to disclose all misdemeanors "REGARDLESS OF LENGTH OF TIME  
26 WHICH HAS PASSED SINCE THE CONVICTION." On or about August 12, 2003,  
27 Respondent circled the answer "NO" to the form's question, "HAVE YOU EVER BEEN  
28 'CONVICTED' OF ANY OFFENSE, INCLUDING TRAFFIC VIOLATIONS?" However,

1 Respondent had been convicted of two prior misdemeanor crimes as set forth as follows:

2 a. On or about January 24, 1995, in a prior criminal proceeding  
3 entitled *People v. Garcia* in Los Angeles Superior Court, Case Number  
4 94M15547, Respondent was convicted of violating Penal Code section  
5 273.5, subdivision (a) (infliction of corporal injury on spouse).

6 b. On or about January 30, 1996, in a prior criminal proceeding  
7 entitled *People v. Garcia* in Los Angeles Superior Court, Case Number  
8 95M04882, Respondent was convicted of violating Penal Code section  
9 273.6, subdivision (a) (disobeying domestic relations court order).

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11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
13 alleged, and that following the hearing, the Board issue a decision:

- 14 1. Revoking or suspending Vocational Nurse License Number VN 209886,  
15 issued to Respondent;  
16 2. Ordering Respondent to pay the Board the reasonable costs of the  
17 investigation and enforcement of this case, pursuant to section 125.3;  
18 3. Taking such other and further action as deemed necessary and proper.  
19

20 DATED: June 18, 2008

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22 

23 TERESA BELLO-JONES, J.D., M.S.N., R.N.  
24 Executive Officer  
25 Board of Vocational Nursing and Psychiatric Technicians  
26 Department of Consumer Affairs  
27 State of California  
28 Complainant

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